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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,875	07/21/2003	Nobuyuki Shomura	9871/0N071US0	6794
7278	7590	11/30/2004	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			VASUDEVA, AJAY	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/624,875

Applicant(s)

SHOMURA, NOBUYUKI

Examiner

Ajay Vasudeva

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 and 4 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The Examiner recommends modifying figure 11B with an annotation "EACV Controller" for easy and precise understanding of the claimed feature. It is anticipated that the discussed figure will be printed on the face of the published patent.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1, 9 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Shidara et al. ('882).

Shidara et al. shows an outboard motor (figure 1) having a throttle operating unit [26] for operating an opening of a throttle valve [50] to control a volume of intake air to the engine, an electric air control valve (EACV) [74] for increasing and decreasing the volume of intake air to the engine via a separate system from the throttle valve, a control unit [22] including an actuator for controlling the opening and closing of the air control valve. An engine speed operating unit [34] adjacent a shift lever [32] senses the shift lever movement inputted by the user between

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neutral or forward/reverse mode (see col. 4, lines 5-12; and also figure 4), and directly inputs such information as a corresponding air increase or decrease signal into the control unit.

4. Claim 1, 2, 5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 56-141044 A ('044).

JP ('044) shows an outboard motor having a throttle operating unit (fig. 2) for operating an opening of a throttle valve to control a volume of intake air to the engine, an air control valve [14] for increasing and decreasing the volume of intake air to the engine via a separate system from the throttle valve (fig. 4), a control unit [18] including an actuator for controlling the opening and closing of the air control valve. An engine speed operating unit in the form of a manual switch accepts direct input from a user (see abstract) for an air decrease signal into the control unit.

5. Claim 1, and 5-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kanno et al. ('766).

Kanno et al. ('766) shows an outboard motor (figures 1 and 4) having a throttle operating unit [178, 180] for operating an opening of a throttle valve [174] to control a volume of intake air to the engine, an air control valve [212] for increasing and decreasing the volume of intake air to the engine via a separate system from the throttle valve, a control unit [110] including an actuator (col. 7, lines 32-35) for controlling the opening and closing of the air control valve. An engine speed operating unit [280] provides a basis for directly inputting an air increase or decrease signal into the control unit according to user's preference (see figure 1 and col. 9, 10 and 11). The control unit restores the air control valve to a predetermined fundamental control value when the throttle valve is controlled by the throttle operating unit. The engine speed

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operating unit is adapted to output an air increase or decrease signal utilizing a variable resistor (col. 11, lines 9-10).

***Allowable Subject Matter***

6. Claims 3 and 4 are allowed.

***Response to Arguments***

7. Applicant's arguments filed 9/07/2004 have been fully considered but they are not persuasive.

(A) Regarding the rejection based on Shidara et al. ('882), applicant argues that unit 34 is not an engine speed control unit, as follows:

However, the "neutral switch 34" is a switch, i.e. a sensor, for detecting a neutral position of the shift lever 32. Column 4, lines 6 to 9 of the '882 patent states: "a neutral switch 34 ... outputs an ON signal when the operator puts the shift lever 32 in Neutral and outputs an OFF signal when the operator puts the shift lever 32 in Forward or Reverse." That is, the "neutral switch 34" outputs a signal whether the position of the shift lever 32 is forward, reverse or neutral, but does not output an air increase or decrease signal.

Examiner's response: The unit 34 acts as a device that senses a signal and transmits it on to a control unit. In the case of Shidara, the unit 34 senses a certain movement of the shift lever inputted by a user, and provides such information to the control unit such that the auxiliary air can be correspondingly increased or decreased. The unit 34 is therefore considered equivalent to engine speed operating unit.

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(B) Regarding the rejection based on Kanno ('766), applicant argues as follows:

The '766 patent relates to a control system for changing a preset of an aimed idle engine speed. Once the aimed idle engine speed is set, the user cannot freely change the engine speed during the operation of the engine.

In contrast, according to the present invention, the user can freely change the engine speed during the operation of the engine. The engine speed operating unit, such as a push switch of claim 2, is not directed to controlling the idling speed but the speed of the engine itself as the name "engine speed operating unit" indicates.

Examiner's response: The claims do not recite an ability to change the idle speed during the operation of the engine. In fact, the applicant has only claimed an ability to open and close the air control valve by a user input. Further, one would be quite capable of manipulating the resistor while the engine is in a "start" mode, which is considered equivalent to the engine being in operation.

### ***Conclusion***

8. The prior art made of record in the attached PTO Form 890, but not yet relied upon, is considered pertinent to applicant's disclosure:

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (703) 306-5992. The examiner can normally be reached on Monday-Friday 1:00 pm--5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AV

Ajay Vasudeva  
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Art Unit 3617

  
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